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**ENDORSED
FILED
ALAMEDA COUNTY**

FEB 01 2008

CLERK OF THE SUPERIOR COURT
By Tasha Perry, Deputy

6 BRADY J. MITCHELL, Bar No. 238572
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Attorneys for Defendants
VELOCITY EXPRESS LEASING, INC.; AND
VELOCITY EXPRESS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

15 PHILIP JONES, and KIM KEO,
16 individually and on behalf of others
17 similarly situated, and on behalf of the
18 California general public,

Plaintiff,

v.

20 VELOCITY EXPRESS LEASING,
21 INC., also known as VELOCITY
22 EXPRESS LEASING WEST COAST,
23 INC., a Delaware Corporation;
24 VELOCITY EXPRESS, INC., a
25 Delaware Corporation; and DOES I
26 through 100, Inclusive,

Defendants.

Case No. RG 07354933

**DEFENDANTS' NOTICE TO STATE
COURT OF REMOVAL OF ACTION
TO FEDERAL COURT**

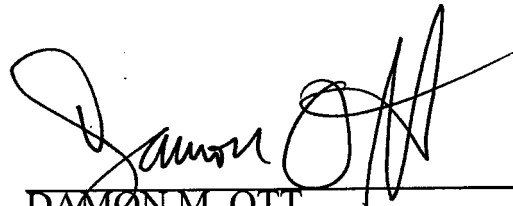
Complaint Filed: November 6, 2007

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE THAT on February 1, 2008, Defendants
3 Velocity Express Leasing, Inc. (erroneously also sued as an entity "also known
4 as Velocity Express Leasing West Coast, Inc.") and Velocity Express, Inc.
5 (collectively "Defendants") filed a Notice of Removal in the office of the clerk
6 of the United States District Court for the Northern District of California,
7 Oakland Branch. A copy of Defendants' Notice is attached hereto.

8 PLEASE TAKE FURTHER NOTICE THAT by the filing of said
9 Notice of Removal in the United States District Court, and by this Notice to
10 State Court, the above-entitled action has been removed from this Court to the
11 United States District Court for the Northern District of California, Oakland
12 Branch, pursuant to 28 U.S.C. §§ 1332(d), 1441(a), and 1446. Accordingly,
13 this Court may not proceed further in the above-captioned matter unless and
14 until it is remanded.

15 Dated: February 1, 2008



DAMON M. OTT
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendants
VELOCITY EXPRESS LEASING,
INC. AND VELOCITY EXPRESS,
INC.

22 Firmwide:84095265.2 057214.1004

EXHIBIT A

E filing

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Attorneys for Defendants
VELOCITY EXPRESS LEASING, INC.; AND
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PHILIP JONES, and KIM KEO,
individually and on behalf of others
similarly situated, and on behalf of the
California general public,

Plaintiff,

v.

VELOCITY EXPRESS LEASING,
INC., also known as VELOCITY
EXPRESS LEASING WEST COAST,
INC., a Delaware Corporation;
VELOCITY EXPRESS, INC., a
Delaware Corporation; and DOES I
through 100, Inclusive,

Defendants.

Case No.

C08-00773 VRW

**DEFENDANTS' NOTICE TO
FEDERAL COURT OF REMOVAL
OF CIVIL ACTION FROM STATE
COURT UNDER 28 U.S.C. §§
1332(d), 1441(a), AND 1446**

Complaint Filed: November 6, 2007
(Alameda County Superior Court)

ORIGINAL
FILED
FEB - 1 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

NOTICE OF REMOVAL OF CIVIL
ACTION

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT, PLAINTIFFS
 2 PHILIP JONES AND KIM KEO AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that Defendants Velocity Express
 4 Leasing, Inc. ("Velocity Express Leasing"), erroneously also sued as an entity
 5 "also known as Velocity Express Leasing West Coast, Inc." and Velocity
 6 Express, Inc. ("Velocity Express") (collectively "Defendants") hereby remove
 7 the above-entitled action, Case No. RG 07354933, from the Superior Court of
 8 the State of California, County of Alameda, to the United States District Court
 9 for the Northern District of California, Oakland Branch.

10 Removal is based on 28 U.S.C. sections 1332(d) (the Class Action
 11 Fairness Act), 1441(a) and 1446.

12 In support of this Notice of Removal, Defendant states the
 13 following:

14 **PLEADINGS, SERVICE, PROCEEDINGS**

15 1. On November 6, 2007, Plaintiffs Philip Jones and Kim Keo
 16 (collectively "Plaintiffs") filed a Class Action Complaint in the Superior Court
 17 of the State of California, in and for the County of Alameda, which was
 18 captioned as follows: *Philip Jones and Kim Keo, individually and on behalf of*
 19 *all others similarly situated, and on behalf of the California general public,*
 20 *Plaintiff, vs. Velocity Express Leasing, Inc. also known as Velocity Express*
 21 *Leasing West Coast, Inc., a Delaware Corporation; Velocity Express, Inc., a*
 22 *Delaware Corporation; and DOES 1 through 100, Inclusive, Defendants,*
 23 designated as case number RG 07354933 ("Complaint"). See Declaration of
 24 Damon M. Ott in Support of Notice of Removal ("Ott Decl.") ¶ 2, Exh. A
 25 (Complaint).

26 2. On December 19, 2007, Judge Robert Freedman of the
 27 Superior Court of the State of California, County of Alameda, issued an order
 28

1 designating the case (Case No. RG 07354933) complex pursuant to Rule 3.400
2 *et seq.* of the California Rules of Court. See Ott Decl. ¶ 3, Exh. B (Order).

3 3. On January 3, 2008, Plaintiff served a copy of the Complaint
4 upon Defendants. See Ott Decl. ¶ 4, Exh. C (Notice of Service of Process).

5 4. On January 24, 2008, the Superior Court of the State of
6 California, Judge Robert Freedman presiding, conducted an initial Complex
7 Case Management Conference. Through its counsel, Defendants entered a
8 special appearance at the conference for the sole purpose of notifying the court
9 of Defendants' intention to remove the case to federal court. Plaintiffs appeared
10 generally at the conference, but did not file a Case Management Conference
11 Statement. See Ott Decl. ¶ 5.

12 5. On January 28, 2008, Plaintiffs' counsel, Stephen Glick,
13 served a Notice of Ruling dated January 25, 2008, which memorialized the
14 developments that occurred during the Complex Case Management Conference,
15 and noticed the next Complex Case Management Conference for February 28,
16 2008. See Ott Decl. ¶ 4, Exh. D (Notice of Ruling).

17 6. The above described documents, which are attached as
18 Exhibits A, B, C, and D to the Declaration of Damon M. Ott in Support of
19 Notice of Removal, constitute all of the papers that have been filed or received
20 in this action by Defendant. See Ott Decl. ¶ 7. Their submission thereby
21 satisfies the requirements of 28 U.S.C. Section 1446(a).

22 7. The January 24, 2008 Complex Case Management
23 Conference is the only proceeding to have been conducted in the Superior Court
24 of the State of California, County of Alameda, in the above-captioned matter.
25 See Ott Decl. ¶ 8.

26 JURISDICTION

27 8. This Court has original jurisdiction over this matter under
28 the Class Action Fairness Act because it is a civil action filed as a class action

1 wherein the aggregate amount in controversy exceeds \$5,000,000, exclusive of
2 interest and costs, and at least one plaintiff (if not all) is a citizen of a different
3 State than at least one (if not all) Defendants. 28 U.S.C. § 1332 (d). Although
4 the Class Action Fairness Act contains a number of exceptions to this newly
5 created rule of original jurisdiction (set forth in 28 U.S.C. Section 1332(d)(3)-
6 (5)), however, none of the apply here. Removal of this case to federal court is,
7 therefore, proper. 28 U.S.C. § 1441(a).

8 DIVERSITY

9 9. To satisfy the diversity component, the Class Action
10 Fairness Act requires that at least one member of a class of plaintiffs be a
11 citizen of a State different from any defendant. This requirement is satisfied
12 here.

13 10. Defendants are informed and believe that Plaintiff Philip
14 Jones is, and at all times relevant to this action was, a citizen of the State of
15 California. See Ott Decl. ¶ 9.

16 11. Defendants are informed and believe that Plaintiff Kim Keo
17 is, and at all times relevant to this action was, a citizen of the State of
18 California. See Ott Decl. ¶ 10.

19 12. Defendants are informed and believe that all or nearly all of
20 the members of the class whom Philip Jones and Kim Keo purport to represent
21 are, and at all times relevant to this action were, citizens of the State of
22 California. See Ott Decl. ¶ 8.

23 13. A corporation is deemed to be a citizen of both the state in
24 which it was incorporated and the state where it has its principal place of
25 business. 28 U.S.C. § 1332(c).

26 14. Both of the Defendants were incorporated in Delaware and
27 are, therefore, citizens of Delaware. See Declaration of Michael Trafecante
28 (“Trafecante Decl.”) ¶¶ 3-4.

1 15. To determine a corporation's principal place of business,
2 courts apply one of two tests. The first test, known as the "place of operations
3 test," considers the principal place of business to be the state in which a
4 substantial predominance of the company's business is performed. The second
5 test, known as the "nerve center test," deems the principal place of business to
6 be the state in which the corporation's executive and administrative functions
7 are conducted. Tosco Corp. v. Communities for a Better Environment, 236
8 F.3d 495, 500 (9th Cir. 2001); Industrial Tectronics, Inc. v. Aero Alloy, 912
9 F.2d 1090, 1092 (9th Cir. 1990).

10 16. In the Ninth Circuit, courts use the "place of operations test"
11 to establish a corporation's principal place of business unless a party
12 demonstrates that its activities do not substantially predominate in any one
13 particular state. Tosco, supra, 236 F.3d at 500 (holding the "Ninth Circuit
14 applies the place of operations test unless the [party] shows that its activities do
15 not substantially predominate in any one state."). To establish "substantial
16 predominance," a party must show that the amount of its business activity in
17 one state is significantly larger than any other state in which it conducts
18 business. Id.

19 17. Although Defendants Velocity Express Leasing and
20 Velocity Express are two separate legal entities, their business operations for the
21 purposes of this suit are essentially one and the same. See Trafecante Decl. ¶ 5.
22 Defendants are in the business of providing delivery services by and through a
23 network of independent contractors. Id. Defendants share the same Chief
24 Executive Officer, Chief Financial Officer, and Chief Administrative Officer,
25 all of whom work out of Defendants' shared headquarters. Trafecante Decl. ¶
26 8. Thus, it can be said that Defendants' business operations are wholly
27 integrated.
28

1 18. Defendants' business activity is spread throughout 40 states,
2 with no one state predominating. Trafecante Decl. ¶¶ 6-7. The states in which
3 Defendants conduct the greatest volume of business are Florida and New York;
4 however, the business activity in these states is not significantly greater than
5 that conducted in other states. Trafecante Decl. ¶¶ 6-7. Regardless, if the place
6 of operations test were used, Defendants' principal place of business would
7 likely be New York, with Defendants being deemed citizens of the same.
8 Under no circumstances would either Defendant be deemed a citizen of
9 California using the place of operations test.

10 19. Because the business activity of Defendants in New York—
11 or any other state—is insufficient to trigger the place of operations test, the
12 nerve center test must instead be applied. The analysis under the nerve center
13 test would be the same for both Defendants because they are jointly operated by
14 the same executive and administrative personnel in the same locations. The
15 vast majority of Defendants' executive and administrative functions are
16 conducted at their headquarters in Westport, Connecticut. See Trafecante Decl.
17 ¶ 8. The Westport headquarters houses the Chief Executive Officer, the Chief
18 Financial Officer and the Chief Operations Officer, to name only a few. While
19 Defendants maintain smaller satellite offices in Texas and New Jersey, the
20 majority of all executive, managerial and administrative decisions are made in
21 the Westport, Connecticut office. See Trafecante Decl. ¶¶ 8-10. Defendants do
22 not maintain a corporate or administrative office in California, although they do
23 operate other types of operational facilities in the state. See Trafecante Decl. ¶¶
24 11-12.

25 20. In light of the above facts, Defendants' principal place of
26 business under the nerve center test, which is applicable here, is Connecticut.
27 Defendants are, therefore, citizens of Connecticut (and Delaware). By
28 comparison, Defendants' activities in Texas and New Jersey are too minimal for

1 either of those states to be deemed Defendants' principal place of business
2 under the nerve center test. Regardless, it is clear under this test that California
3 would not be the principal place of business for either Defendant.

4 21. Although the Complaint includes "Doe" Defendants 1
5 through 100, pursuant to 28 U.S.C. § 1441(a), the citizenship of Defendants
6 sued under fictitious names should be disregarded for the purpose of
7 determining diversity jurisdiction. See Newcomb v. Adolf Coors Co., 157 F.3d
8 686, 690 (9th Cir. 1998).

9 AMOUNT IN CONTROVERSY

10 22. The Class Action Fairness Act requires that the aggregate
11 damages sought by the class members exceeds \$5,000,000.00 exclusive of
12 interest and costs. 28 U.S.C. § 1332(d)(2) and (6). Plaintiffs' Complaint is
13 silent as to the total amount of damages claimed. However, the failure of the
14 Complaint to specify the amount of damages sought does not deprive this Court
15 of jurisdiction. See White v. J.C. Penny Life Ins. Co., 861 F. Supp. 25, 26 (S.D.
16 W.Va. 1994) (permitting removal notwithstanding the failure of Plaintiff to
17 plead a specific dollar amount in controversy; if the rules were otherwise, "any
18 plaintiff could avoid removal simply by declining...to place a specific dollar
19 value upon its claim"). To establish jurisdiction, Defendants need only
20 demonstrate by a preponderance of the evidence that Plaintiffs' claims exceed
21 the jurisdictional minimum. See Sanchez v. Monumental Life Ins. Co., 102
22 F.3d 398, 404 (9th Cir. 1996); Singer v. State Farm Mutual Auto Ins. Co., 116
23 F.3d 373, 376 (9th Cir. 1997).

24 23. Although Defendants deny the validity of Plaintiffs' claims
25 and the requests for relief thereon, the facial allegations in Plaintiffs' Complaint
26 and the damages claimed therein are in excess of the jurisdictional minimum.
27 Such a showing can be made by relying solely upon the lengthy list of damages
28 and other relief requested by Plaintiffs. See Lockett v. Delta Airlines, Inc., 171

1 F.3d 295, 298 (5th Cir. 1999) (finding that damages sought by plaintiff,
 2 although silent as to an amount, were sufficient to support a finding of
 3 jurisdiction); DeAguillar v. Boeing Co., 47 F.3d 1404, 1412 (5th Cir. 1995)
 4 (stating that “defendant can show by a preponderance of the evidence that the
 5 amount in controversy is greater than the jurisdictional amount”); accord Gaus
 6 v. Miles, Inc., 980 F.2d 564, 566-67 (9th Cir. 1992); White v. FCI USA, Inc.,
 7 319 F.3d 672, 674-76 (5th Cir. 2003) (facially apparent from the complaint that
 8 plaintiff’s claim exceeded the jurisdictional threshold). Even a conservative
 9 reading of Plaintiffs’ Complaint and requests for relief makes clear that the
 10 amount in controversy easily exceeds the jurisdictional minimum.

11 24. In their Complaint, Plaintiffs seek on behalf of themselves
 12 and the putative class: (1) unpaid overtime wages; (2) unpaid minimum wages;
 13 (3) reimbursement for all business related expenses; (4) statutory penalties for
 14 failure to timely pay all wages owed upon discharge; (5) statutory penalties for
 15 failure to provide itemized wage statements; (6) liquidated damages for failure
 16 to pay minimum wages; (7) interest on all due and unpaid wages; and (8) an
 17 award of attorneys’ fees and costs. See Ott Decl. ¶ 2, Exh. A, Complaint.

18 25. In essence, the Complaint defines the putative class as “[a]ll
 19 California-based couriers or other similar titles who claim” they are entitled to
 20 any of the relief sought in the Complaint. See Ott Decl. ¶ 2, Exh. A. (The
 21 actual language of the Complaint describes the class in terms of five subclasses
 22 that mirror the five primary causes of action.)

23 26. Defendants currently contract with approximately 260
 24 independent contractor couriers (“contractors”) in California. See Trafecante
 25 Decl. ¶ 7. Thus, assuming Plaintiffs’ allegations to be true (which Defendant
 26 strenuously disputes), the putative class would likely consist of no fewer than
 27 260 contractors. This figure is conservative because it assumes a static universe
 28 in which the contractors contracting with Defendants remained the same during

1 the entire relevant limitations periods, which is not the case. Regardless, even
2 assuming a conservative courier class of 260, the amount in controversy easily
3 exceeds \$5,000,000.00. In fact, Plaintiffs' claim for unpaid overtime alone far
4 exceeds the minimum threshold.

5 27. Although the Complaint does not specify the precise amount
6 of unpaid overtime sought, the Complaint alleges that "Plaintiffs and all
7 members of the classes...were scheduled as a matter of established company
8 policy to work and in fact worked...in excess of eight (8) hours per day and in
9 excess of forty (40) hours per work week without receiving straight time or
10 overtime compensation for such excess hours..." See Ott Decl. ¶ 2, Exh. A, ¶
11 34 (emphasis added).

12 28. The number of hours contractors spend per week performing
13 delivery services arranged by Defendants varies greatly from week to week and
14 from contractor to contractor. See Declaration of Brian Savage in Support of
15 Notice of Removal ("Savage Decl.") ¶ 3. In general, however, contractors
16 spend between 35 and 55 hours per week performing delivery services arranged
17 by Defendants. Savage Decl. ¶ 3. Based on this information, as well as the
18 allegations contained in the Complaint, it is reasonable to assume for purposes
19 of this removal that Plaintiffs and the putative class members each worked an
20 average of approximately 45 hours per week, five of which being overtime
21 hours.

22 29. Like the number of hours, the amount of revenue
23 Defendants pay to contractors for performing delivery services also varies
24 greatly from week to week and contractor to contractor. Savage Decl. ¶ 4.
25 Most contractors, however, are paid revenue ranging between approximately
26 \$900.00 and \$1,500.00 per week. Based on this information, it is reasonable to
27 assume for purposes of this removal that Plaintiffs and the putative class
28 members were each paid an average of \$1,200 per week.

1 30. Assuming Plaintiffs prevail on their overtime claim, based
2 on the above averages, the applicable "regular rate" of pay for Plaintiffs and the
3 putative class members under California law would be \$30 per hour (i.e.,
4 \$1,200/40). The applicable overtime rate is, therefore, \$45 per hour. Because
5 Plaintiffs allege that they and the putative class members were not paid straight
6 time or an overtime premium for overtime hours worked, Plaintiffs and each
7 putative class member would be entitled to \$45 for each overtime hour worked,
8 or \$225 per week (\$45 x 5 hours). Assuming each of the estimated 260 putative
9 class members performed services for 50 weeks per year for a period of four
10 years, the total amount of unpaid overtime sought would equal \$11,700,000.00
11 (\$225 x 50 weeks x 4 years x 260 putative class members). Plaintiffs' overtime
12 claims are subject to a four-year statute of limitations because three years are
13 available under the Labor Code with an additional fourth year available
14 pursuant to the Unfair Competition Law. See Cal. Code Civ. Proc. § 338(a) and
15 Cal. Bus. & Prof. Code § 17200.

16 31. Given the estimated amount of unpaid overtime sought by
17 Plaintiffs (which Defendant deems conservative based upon Plaintiffs'
18 allegations), it is unnecessary to consider any of the other four causes of action
19 alleged or the damages sought thereon to prove the existence of a sufficient
20 amount in controversy. Regardless, based simply on the number of estimated
21 class members and the nature of Plaintiffs' claims, it is clear Plaintiffs also seek
22 considerable damages with respect to each of the other causes of action. Thus,
23 there is no question that the \$5,000,000.00 threshold is exceeded.

24 **TIMELINESS OF REMOVAL**

25 32. This Notice of Removal is timely in that it has been filed within 30
26 days of the service of the Summons and Complaint on or about January 3, 2008,
27 and within one year of the filing of the Complaint on November 6, 2007. See
28 28 U.S.C. § 1446(b).

VENUE

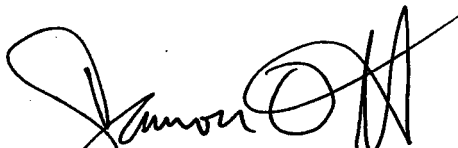
33. The action is pending in the Superior Court of California for the County of Alameda. Venue therefore properly lies in the United States District Court for the Northern District of California, Oakland Branch, pursuant to 28 U.S.C. §§ 1391(a) and 1441(a). However, Defendant reserves the right to move to transfer venue on information that Plaintiffs are not residents of the County of Alameda and/or for the convenience of the witnesses.

NOTICE TO PLAINTIFFS

34. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the Northern District of California, written notice of such filing will be given by the undersigned to Stephen Glick, Plaintiffs' counsel of record. In addition, a copy of this Notice of Removal will be filed with the Clerk of the Court for the Superior Court of the County of Alameda, California.

WHEREFORE, Defendant now prays that the above-entitled action now pending against Defendant in the Superior Court of the State of California, County of Alameda, should be removed therefrom to this Court.

Dated: February 1, 2008



 DAMON M. OTT
 LITTLER MENDELSON
 A Professional Corporation
 Attorneys for Defendants
 VELOCITY EXPRESS LEASING,
 INC. AND VELOCITY EXPRESS,
 INC.

Firmwide: 84089351.3 057214.1004

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10 Attorneys for Defendants
11 VELOCITY EXPRESS LEASING, INC.; AND
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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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15 PHILIP JONES, and KIM KEO,
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Case No. RG 07354933

**DEFENDANTS' NOTICE TO
ADVERSE PARTY OF REMOVAL
TO FEDERAL COURT UNDER 28
U.S.C. §§ 1332(d), 1441(a) AND 1446**

Complaint Filed: November 6, 2007
(Alameda County Superior Court)

ENDORSED
FILED
ALAMEDA COUNTY

FEB 01 2008


CLERK OF THE SUPERIOR COURT
By Tasha Parry, Deputy

1 TO PLAINTIFFS PHILIP JONES AND KIM KEO AND THEIR ATTORNEYS
2 OF RECORD:

3 PLEASE TAKE NOTICE THAT a Notice of Removal of this action
4 was filed in the United States District Court for the Northern District of California
5 on February 1, 2008.

6 A copy of said Notice of Removal is attached to this Notice, and is
7 served and filed herewith.

8 Dated: February 1, 2008

9
10 
11 DAMON M. OTT
12 LITTLER MENDELSON
13 A Professional Corporation
14 Attorneys for Defendants
15 VELOCITY EXPRESS LEASING,
16 INC. AND VELOCITY EXPRESS,
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DEFENDANTS' NOTICE TO
ADVERSE PARTY OF REMOVAL

1.

EXHIBIT A

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Attorneys for Defendants
VELOCITY EXPRESS LEASING, INC.; AND
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UNITED STATES DISTRICT COURT
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individually and on behalf of others
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CLERK U.S. DISTRICT COURT
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OAKLAND

C08-00773 VRW

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27 Superior Court of the State of California, County of Alameda, issued an order
28

1 designating the case (Case No. RG 07354933) complex pursuant to Rule 3.400
2 *et seq.* of the California Rules of Court. See Ott Decl. ¶ 3, Exh. B (Order).

3 3. On January 3, 2008, Plaintiff served a copy of the Complaint
4 upon Defendants. See Ott Decl. ¶ 4, Exh. C (Notice of Service of Process).

5 4. On January 24, 2008, the Superior Court of the State of
6 California, Judge Robert Freedman presiding, conducted an initial Complex
7 Case Management Conference. Through its counsel, Defendants entered a
8 special appearance at the conference for the sole purpose of notifying the court
9 of Defendants' intention to remove the case to federal court. Plaintiffs appeared
10 generally at the conference, but did not file a Case Management Conference
11 Statement. See Ott Decl. ¶ 5.

12 5. On January 28, 2008, Plaintiffs' counsel, Stephen Glick,
13 served a Notice of Ruling dated January 25, 2008, which memorialized the
14 developments that occurred during the Complex Case Management Conference,
15 and noticed the next Complex Case Management Conference for February 28,
16 2008. See Ott Decl. ¶ 4, Exh. D (Notice of Ruling).

17 6. The above described documents, which are attached as
18 Exhibits A, B, C, and D to the Declaration of Damon M. Ott in Support of
19 Notice of Removal, constitute all of the papers that have been filed or received
20 in this action by Defendant. See Ott Decl. ¶ 7. Their submission thereby
21 satisfies the requirements of 28 U.S.C. Section 1446(a).

22 7. The January 24, 2008 Complex Case Management
23 Conference is the only proceeding to have been conducted in the Superior Court
24 of the State of California, County of Alameda, in the above-captioned matter.
25 See Ott Decl. ¶ 8.

26 JURISDICTION

27 8. This Court has original jurisdiction over this matter under
28 the Class Action Fairness Act because it is a civil action filed as a class action

1 wherein the aggregate amount in controversy exceeds \$5,000,000, exclusive of
2 interest and costs, and at least one plaintiff (if not all) is a citizen of a different
3 State than at least one (if not all) Defendants. 28 U.S.C. § 1332 (d). Although
4 the Class Action Fairness Act contains a number of exceptions to this newly
5 created rule of original jurisdiction (set forth in 28 U.S.C. Section 1332(d)(3)-
6 (5)), however, none of the apply here. Removal of this case to federal court is,
7 therefore, proper. 28 U.S.C. § 1441(a).

8 DIVERSITY

9 9. To satisfy the diversity component, the Class Action
10 Fairness Act requires that at least one member of a class of plaintiffs be a
11 citizen of a State different from any defendant. This requirement is satisfied
12 here.

13 10. Defendants are informed and believe that Plaintiff Philip
14 Jones is, and at all times relevant to this action was, a citizen of the State of
15 California. See Ott Decl. ¶ 9.

16 11. Defendants are informed and believe that Plaintiff Kim Keo
17 is, and at all times relevant to this action was, a citizen of the State of
18 California. See Ott Decl. ¶ 10.

19 12. Defendants are informed and believe that all or nearly all of
20 the members of the class whom Philip Jones and Kim Keo purport to represent
21 are, and at all times relevant to this action were, citizens of the State of
22 California. See Ott Decl. ¶ 8.

23 13. A corporation is deemed to be a citizen of both the state in
24 which it was incorporated and the state where it has its principal place of
25 business. 28 U.S.C. § 1332(c).

26 14. Both of the Defendants were incorporated in Delaware and
27 are, therefore, citizens of Delaware. See Declaration of Michael Trafecante
28 ("Trafecante Decl.") ¶¶ 3-4.

1 15. To determine a corporation's principal place of business,
2 courts apply one of two tests. The first test, known as the "place of operations
3 test," considers the principal place of business to be the state in which a
4 substantial predominance of the company's business is performed. The second
5 test, known as the "nerve center test," deems the principal place of business to
6 be the state in which the corporation's executive and administrative functions
7 are conducted. Tosco Corp. v. Communities for a Better Environment, 236
8 F.3d 495, 500 (9th Cir. 2001); Industrial Tectronics, Inc. v. Aero Alloy, 912
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11 to establish a corporation's principal place of business unless a party
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13 particular state. Tosco, supra, 236 F.3d at 500 (holding the "Ninth Circuit
14 applies the place of operations test unless the [party] shows that its activities do
15 not substantially predominate in any one state."). To establish "substantial
16 predominance," a party must show that the amount of its business activity in
17 one state is significantly larger than any other state in which it conducts
18 business. Id.

19 17. Although Defendants Velocity Express Leasing and
20 Velocity Express are two separate legal entities, their business operations for the
21 purposes of this suit are essentially one and the same. See Trafecante Decl. ¶ 5.
22 Defendants are in the business of providing delivery services by and through a
23 network of independent contractors. Id. Defendants share the same Chief
24 Executive Officer, Chief Financial Officer, and Chief Administrative Officer,
25 all of whom work out of Defendants' shared headquarters. Trafecante Decl. ¶
26 8. Thus, it can be said that Defendants' business operations are wholly
27 integrated.
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1 18. Defendants' business activity is spread throughout 40 states,
2 with no one state predominating. Trafecante Decl. ¶¶ 6-7. The states in which
3 Defendants conduct the greatest volume of business are Florida and New York;
4 however, the business activity in these states is not significantly greater than
5 that conducted in other states. Trafecante Decl. ¶¶ 6-7. Regardless, if the place
6 of operations test were used, Defendants' principal place of business would
7 likely be New York, with Defendants being deemed citizens of the same.
8 Under no circumstances would either Defendant be deemed a citizen of
9 California using the place of operations test.

10 19. Because the business activity of Defendants in New York—
11 or any other state—is insufficient to trigger the place of operations test, the
12 nerve center test must instead be applied. The analysis under the nerve center
13 test would be the same for both Defendants because they are jointly operated by
14 the same executive and administrative personnel in the same locations. The
15 vast majority of Defendants' executive and administrative functions are
16 conducted at their headquarters in Westport, Connecticut. See Trafecante Decl.
17 ¶ 8. The Westport headquarters houses the Chief Executive Officer, the Chief
18 Financial Officer and the Chief Operations Officer, to name only a few. While
19 Defendants maintain smaller satellite offices in Texas and New Jersey, the
20 majority of all executive, managerial and administrative decisions are made in
21 the Westport, Connecticut office. See Trafecante Decl. ¶¶ 8-10. Defendants do
22 not maintain a corporate or administrative office in California, although they do
23 operate other types of operational facilities in the state. See Trafecante Decl. ¶¶
24 11-12.

25 20. In light of the above facts, Defendants' principal place of
26 business under the nerve center test, which is applicable here, is Connecticut.
27 Defendants are, therefore, citizens of Connecticut (and Delaware). By
28 comparison, Defendants' activities in Texas and New Jersey are too minimal for

1 either of those states to be deemed Defendants' principal place of business
2 under the nerve center test. Regardless, it is clear under this test that California
3 would not be the principal place of business for either Defendant.

4 21. Although the Complaint includes "Doe" Defendants 1
5 through 100, pursuant to 28 U.S.C. § 1441(a), the citizenship of Defendants
6 sued under fictitious names should be disregarded for the purpose of
7 determining diversity jurisdiction. See Newcomb v. Adolf Coors Co., 157 F.3d
8 686, 690 (9th Cir. 1998).

9 AMOUNT IN CONTROVERSY

10 22. The Class Action Fairness Act requires that the aggregate
11 damages sought by the class members exceeds \$5,000,000.00 exclusive of
12 interest and costs. 28 U.S.C. § 1332(d)(2) and (6). Plaintiffs' Complaint is
13 silent as to the total amount of damages claimed. However, the failure of the
14 Complaint to specify the amount of damages sought does not deprive this Court
15 of jurisdiction. See White v. J.C. Penny Life Ins. Co., 861 F. Supp. 25, 26 (S.D.
16 W.Va. 1994) (permitting removal notwithstanding the failure of Plaintiff to
17 plead a specific dollar amount in controversy; if the rules were otherwise, "any
18 plaintiff could avoid removal simply by declining...to place a specific dollar
19 value upon its claim"). To establish jurisdiction, Defendants need only
20 demonstrate by a preponderance of the evidence that Plaintiffs' claims exceed
21 the jurisdictional minimum. See Sanchez v. Monumental Life Ins. Co., 102
22 F.3d 398, 404 (9th Cir. 1996); Singer v. State Farm Mutual Auto Ins. Co., 116
23 F.3d 373, 376 (9th Cir. 1997).

24 23. Although Defendants deny the validity of Plaintiffs' claims
25 and the requests for relief thereon, the facial allegations in Plaintiffs' Complaint
26 and the damages claimed therein are in excess of the jurisdictional minimum.
27 Such a showing can be made by relying solely upon the lengthy list of damages
28 and other relief requested by Plaintiffs. See Luckett v. Delta Airlines, Inc., 171

1 F.3d 295, 298 (5th Cir. 1999) (finding that damages sought by plaintiff,
 2 although silent as to an amount, were sufficient to support a finding of
 3 jurisdiction); DeAguillar v. Boeing Co., 47 F.3d 1404, 1412 (5th Cir. 1995)
 4 (stating that “defendant can show by a preponderance of the evidence that the
 5 amount in controversy is greater than the jurisdictional amount”); accord Gaus
 6 v. Miles, Inc., 980 F.2d 564, 566-67 (9th Cir. 1992); White v. FCI USA, Inc.,
 7 319 F.3d 672, 674-76 (5th Cir. 2003) (facially apparent from the complaint that
 8 plaintiff’s claim exceeded the jurisdictional threshold). Even a conservative
 9 reading of Plaintiffs’ Complaint and requests for relief makes clear that the
 10 amount in controversy easily exceeds the jurisdictional minimum.

11 24. In their Complaint, Plaintiffs seek on behalf of themselves
 12 and the putative class: (1) unpaid overtime wages; (2) unpaid minimum wages;
 13 (3) reimbursement for all business related expenses; (4) statutory penalties for
 14 failure to timely pay all wages owed upon discharge; (5) statutory penalties for
 15 failure to provide itemized wage statements; (6) liquidated damages for failure
 16 to pay minimum wages; (7) interest on all due and unpaid wages; and (8) an
 17 award of attorneys’ fees and costs. See Ott Decl. ¶ 2, Exh. A, Complaint.

18 25. In essence, the Complaint defines the putative class as “[a]ll
 19 California-based couriers or other similar titles who claim” they are entitled to
 20 any of the relief sought in the Complaint. See Ott Decl. ¶ 2, Exh. A. (The
 21 actual language of the Complaint describes the class in terms of five subclasses
 22 that mirror the five primary causes of action.)

23 26. Defendants currently contract with approximately 260
 24 independent contractor couriers (“contractors”) in California. See Trafecante
 25 Decl. ¶ 7. Thus, assuming Plaintiffs’ allegations to be true (which Defendant
 26 strenuously disputes), the putative class would likely consist of no fewer than
 27 260 contractors. This figure is conservative because it assumes a static universe
 28 in which the contractors contracting with Defendants remained the same during

1 the entire relevant limitations periods, which is not the case. Regardless, even
2 assuming a conservative courier class of 260, the amount in controversy easily
3 exceeds \$5,000,000.00. In fact, Plaintiffs' claim for unpaid overtime alone far
4 exceeds the minimum threshold.

5 27. Although the Complaint does not specify the precise amount
6 of unpaid overtime sought, the Complaint alleges that "Plaintiffs and all
7 members of the classes...were scheduled as a matter of established company
8 policy to work and in fact worked...in excess of eight (8) hours per day and in
9 excess of forty (40) hours per work week without receiving straight time or
10 overtime compensation for such excess hours..." See Ott Decl. ¶ 2, Exh. A, ¶
11 34 (emphasis added).

12 28. The number of hours contractors spend per week performing
13 delivery services arranged by Defendants varies greatly from week to week and
14 from contractor to contractor. See Declaration of Brian Savage in Support of
15 Notice of Removal ("Savage Decl.") ¶ 3. In general, however, contractors
16 spend between 35 and 55 hours per week performing delivery services arranged
17 by Defendants. Savage Decl. ¶ 3. Based on this information, as well as the
18 allegations contained in the Complaint, it is reasonable to assume for purposes
19 of this removal that Plaintiffs and the putative class members each worked an
20 average of approximately 45 hours per week, five of which being overtime
21 hours.

22 29. Like the number of hours, the amount of revenue
23 Defendants pay to contractors for performing delivery services also varies
24 greatly from week to week and contractor to contractor. Savage Decl. ¶ 4.
25 Most contractors, however, are paid revenue ranging between approximately
26 \$900.00 and \$1,500.00 per week. Based on this information, it is reasonable to
27 assume for purposes of this removal that Plaintiffs and the putative class
28 members were each paid an average of \$1,200 per week.

30. Assuming Plaintiffs prevail on their overtime claim, based on the above averages, the applicable "regular rate" of pay for Plaintiffs and the putative class members under California law would be \$30 per hour (i.e., \$1,200/40). The applicable overtime rate is, therefore, \$45 per hour. Because Plaintiffs allege that they and the putative class members were not paid straight time or an overtime premium for overtime hours worked, Plaintiffs and each putative class member would be entitled to \$45 for each overtime hour worked, or \$225 per week (\$45 x 5 hours). Assuming each of the estimated 260 putative class members performed services for 50 weeks per year for a period of four years, the total amount of unpaid overtime sought would equal \$11,700,000.00 (\$225 x 50 weeks x 4 years x 260 putative class members). Plaintiffs' overtime claims are subject to a four-year statute of limitations because three years are available under the Labor Code with an additional fourth year available pursuant to the Unfair Competition Law. See Cal. Code Civ. Proc. § 338(a) and Cal. Bus. & Prof. Code § 17200.

31. Given the estimated amount of unpaid overtime sought by Plaintiffs (which Defendant deems conservative based upon Plaintiffs' allegations), it is unnecessary to consider any of the other four causes of action alleged or the damages sought thereon to prove the existence of a sufficient amount in controversy. Regardless, based simply on the number of estimated class members and the nature of Plaintiffs' claims, it is clear Plaintiffs also seek considerable damages with respect to each of the other causes of action. Thus, there is no question that the \$5,000,000.00 threshold is exceeded.

TIMELINESS OF REMOVAL

32. This Notice of Removal is timely in that it has been filed within 30 days of the service of the Summons and Complaint on or about January 3, 2008, and within one year of the filing of the Complaint on November 6, 2007. See 28 U.S.C. § 1446(b).

VENUE

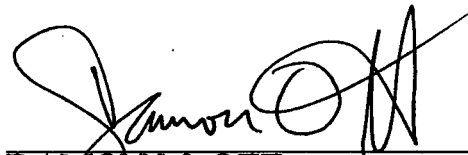
33. The action is pending in the Superior Court of California for the County of Alameda. Venue therefore properly lies in the United States District Court for the Northern District of California, Oakland Branch, pursuant to 28 U.S.C. §§ 1391(a) and 1441(a). However, Defendant reserves the right to move to transfer venue on information that Plaintiffs are not residents of the County of Alameda and/or for the convenience of the witnesses.

NOTICE TO PLAINTIFFS

34. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the Northern District of California, written notice of such filing will be given by the undersigned to Stephen Glick, Plaintiffs' counsel of record. In addition, a copy of this Notice of Removal will be filed with the Clerk of the Court for the Superior Court of the County of Alameda, California.

WHEREFORE, Defendant now prays that the above-entitled action now pending against Defendant in the Superior Court of the State of California, County of Alameda, should be removed therefrom to this Court.

Dated: February 1, 2008



DAMON M. OTT
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendants
VELOCITY EXPRESS LEASING,
INC. AND VELOCITY EXPRESS,
INC.

Firmwide: 84089351.3 057214.1004

1 ROBERT G. HULTENG, Bar No. 071293
2 DAMON M. OTT, Bar No. 215392
3 LITTLER MENDELSON
4 A Professional Corporation
5 650 California Street, 20th Floor
6 San Francisco, CA 94108.2693
7 Telephone: 415.433.1940
8 Facsimile: 415.399.8490
9 E-mail: rhulteng@littler.com

**ENDORSED
FILED
ALAMEDA COUNTY**

FEB 01 2008

CLERK OF THE SUPERIOR COURT
By Tasha Perry, Deputy

6 BRADY J. MITCHELL, Bar No. 238572
7 LITTLER MENDELSON
8 A Professional Corporation
9 2049 Century Park East, 5th Floor
10 Los Angeles, CA 90067
11 Telephone: 310.553.0308
12 Facsimile: 310.553.5583
13 E-mail: bmittchell@littler.com

Attorneys for Defendants
VELOCITY EXPRESS LEASING, INC.; AND
VELOCITY EXPRESS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

15 PHILIP JONES, and KIM KEO,
16 individually and on behalf of others
17 similarly situated, and on behalf of the
18 California general public,

Plaintiff,

v.

20 VELOCITY EXPRESS LEASING,
21 INC., also known as VELOCITY
22 EXPRESS LEASING WEST COAST,
23 INC., a Delaware Corporation;
24 VELOCITY EXPRESS, INC., a
25 Delaware Corporation; and DOES I
26 through 100, Inclusive,

Defendants.

Case No. RG 07354933

**DEFENDANTS' NOTICE TO STATE
COURT OF REMOVAL OF ACTION
TO FEDERAL COURT**

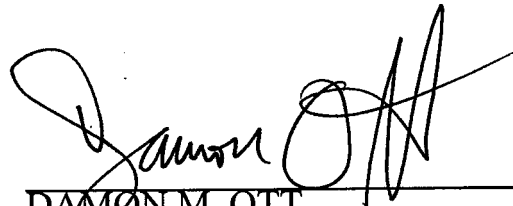
Complaint Filed: November 6, 2007

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE THAT on February 1, 2008, Defendants
3 Velocity Express Leasing, Inc. (erroneously also sued as an entity "also known
4 as Velocity Express Leasing West Coast, Inc.") and Velocity Express, Inc.
5 (collectively "Defendants") filed a Notice of Removal in the office of the clerk
6 of the United States District Court for the Northern District of California,
7 Oakland Branch. A copy of Defendants' Notice is attached hereto.

8 PLEASE TAKE FURTHER NOTICE THAT by the filing of said
9 Notice of Removal in the United States District Court, and by this Notice to
10 State Court, the above-entitled action has been removed from this Court to the
11 United States District Court for the Northern District of California, Oakland
12 Branch, pursuant to 28 U.S.C. §§ 1332(d), 1441(a), and 1446. Accordingly,
13 this Court may not proceed further in the above-captioned matter unless and
14 until it is remanded.

15 Dated: February 1, 2008



DAMON M. OTT
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendants
VELOCITY EXPRESS LEASING,
INC. AND VELOCITY EXPRESS,
INC.

22 Firmwide:84095265.2 057214.1004

EXHIBIT A

E filing

ROBERT G. HULTENG, Bar No. 071293
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E-mail: bmittchell@littler.com

Attorneys for Defendants
VELOCITY EXPRESS LEASING, INC.; AND
VELOCITY EXPRESS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PHILIP JONES, and KIM KEO,
individually and on behalf of others
similarly situated, and on behalf of the
California general public,

Plaintiff,

v.

VELOCITY EXPRESS LEASING,
INC., also known as VELOCITY
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INC., a Delaware Corporation;
VELOCITY EXPRESS, INC., a
Delaware Corporation; and DOES I
through 100, Inclusive,

Defendants.

Case No.

C08-00773 VRW

**DEFENDANTS' NOTICE TO
FEDERAL COURT OF REMOVAL
OF CIVIL ACTION FROM STATE
COURT UNDER 28 U.S.C. §§
1332(d), 1441(a), AND 1446**

Complaint Filed: November 6, 2007
(Alameda County Superior Court)

ORIGINAL
FILED
FEB - 1 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

NOTICE OF REMOVAL OF CIVIL
ACTION

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT, PLAINTIFFS
2 PHILIP JONES AND KIM KEO AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that Defendants Velocity Express
4 Leasing, Inc. ("Velocity Express Leasing"), erroneously also sued as an entity
5 "also known as Velocity Express Leasing West Coast, Inc." and Velocity
6 Express, Inc. ("Velocity Express") (collectively "Defendants") hereby remove
7 the above-entitled action, Case No. RG 07354933, from the Superior Court of
8 the State of California, County of Alameda, to the United States District Court
9 for the Northern District of California, Oakland Branch.

10 Removal is based on 28 U.S.C. sections 1332(d) (the Class Action
11 Fairness Act), 1441(a) and 1446.

12 In support of this Notice of Removal, Defendant states the
13 following:

14 **PLEADINGS, SERVICE, PROCEEDINGS**

15 1. On November 6, 2007, Plaintiffs Philip Jones and Kim Keo
16 (collectively "Plaintiffs") filed a Class Action Complaint in the Superior Court
17 of the State of California, in and for the County of Alameda, which was
18 captioned as follows: *Philip Jones and Kim Keo, individually and on behalf of*
19 *all others similarly situated, and on behalf of the California general public,*
20 *Plaintiff, vs. Velocity Express Leasing, Inc. also known as Velocity Express*
21 *Leasing West Coast, Inc., a Delaware Corporation; Velocity Express, Inc., a*
22 *Delaware Corporation; and DOES 1 through 100, Inclusive, Defendants,*
23 designated as case number RG 07354933 ("Complaint"). See Declaration of
24 Damon M. Ott in Support of Notice of Removal ("Ott Decl.") ¶ 2, Exh. A
25 (Complaint).

26 2. On December 19, 2007, Judge Robert Freedman of the
27 Superior Court of the State of California, County of Alameda, issued an order
28

1 designating the case (Case No. RG 07354933) complex pursuant to Rule 3.400
2 *et seq.* of the California Rules of Court. See Ott Decl. ¶ 3, Exh. B (Order).

3 3. On January 3, 2008, Plaintiff served a copy of the Complaint
4 upon Defendants. See Ott Decl. ¶ 4, Exh. C (Notice of Service of Process).

5 4. On January 24, 2008, the Superior Court of the State of
6 California, Judge Robert Freedman presiding, conducted an initial Complex
7 Case Management Conference. Through its counsel, Defendants entered a
8 special appearance at the conference for the sole purpose of notifying the court
9 of Defendants' intention to remove the case to federal court. Plaintiffs appeared
10 generally at the conference, but did not file a Case Management Conference
11 Statement. See Ott Decl. ¶ 5.

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15 and noticed the next Complex Case Management Conference for February 28,
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17 6. The above described documents, which are attached as
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20 in this action by Defendant. See Ott Decl. ¶ 7. Their submission thereby
21 satisfies the requirements of 28 U.S.C. Section 1446(a).

22 7. The January 24, 2008 Complex Case Management
23 Conference is the only proceeding to have been conducted in the Superior Court
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17 one state is significantly larger than any other state in which it conducts
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20 Velocity Express are two separate legal entities, their business operations for the
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25 20. In light of the above facts, Defendants' principal place of
26 business under the nerve center test, which is applicable here, is Connecticut.
27 Defendants are, therefore, citizens of Connecticut (and Delaware). By
28 comparison, Defendants' activities in Texas and New Jersey are too minimal for

1 either of those states to be deemed Defendants' principal place of business
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3 would not be the principal place of business for either Defendant.

4 21. Although the Complaint includes "Doe" Defendants 1
5 through 100, pursuant to 28 U.S.C. § 1441(a), the citizenship of Defendants
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7 determining diversity jurisdiction. See Newcomb v. Adolf Coors Co., 157 F.3d
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9 AMOUNT IN CONTROVERSY

10 22. The Class Action Fairness Act requires that the aggregate
11 damages sought by the class members exceeds \$5,000,000.00 exclusive of
12 interest and costs. 28 U.S.C. § 1332(d)(2) and (6). Plaintiffs' Complaint is
13 silent as to the total amount of damages claimed. However, the failure of the
14 Complaint to specify the amount of damages sought does not deprive this Court
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20 demonstrate by a preponderance of the evidence that Plaintiffs' claims exceed
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24 23. Although Defendants deny the validity of Plaintiffs' claims
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27 Such a showing can be made by relying solely upon the lengthy list of damages
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 12 and the putative class: (1) unpaid overtime wages; (2) unpaid minimum wages;
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 16 to pay minimum wages; (7) interest on all due and unpaid wages; and (8) an
 17 award of attorneys’ fees and costs. See Ott Decl. ¶ 2, Exh. A, Complaint.

18 25. In essence, the Complaint defines the putative class as “[a]ll
 19 California-based couriers or other similar titles who claim” they are entitled to
 20 any of the relief sought in the Complaint. See Ott Decl. ¶ 2, Exh. A. (The
 21 actual language of the Complaint describes the class in terms of five subclasses
 22 that mirror the five primary causes of action.)

23 26. Defendants currently contract with approximately 260
 24 independent contractor couriers (“contractors”) in California. See Trafecante
 25 Decl. ¶ 7. Thus, assuming Plaintiffs’ allegations to be true (which Defendant
 26 strenuously disputes), the putative class would likely consist of no fewer than
 27 260 contractors. This figure is conservative because it assumes a static universe
 28 in which the contractors contracting with Defendants remained the same during

1 the entire relevant limitations periods, which is not the case. Regardless, even
2 assuming a conservative courier class of 260, the amount in controversy easily
3 exceeds \$5,000,000.00. In fact, Plaintiffs' claim for unpaid overtime alone far
4 exceeds the minimum threshold.

5 27. Although the Complaint does not specify the precise amount
6 of unpaid overtime sought, the Complaint alleges that "Plaintiffs and all
7 members of the classes...were scheduled as a matter of established company
8 policy to work and in fact worked...in excess of eight (8) hours per day and in
9 excess of forty (40) hours per work week without receiving straight time or
10 overtime compensation for such excess hours..." See Ott Decl. ¶ 2, Exh. A, ¶
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12 28. The number of hours contractors spend per week performing
13 delivery services arranged by Defendants varies greatly from week to week and
14 from contractor to contractor. See Declaration of Brian Savage in Support of
15 Notice of Removal ("Savage Decl.") ¶ 3. In general, however, contractors
16 spend between 35 and 55 hours per week performing delivery services arranged
17 by Defendants. Savage Decl. ¶ 3. Based on this information, as well as the
18 allegations contained in the Complaint, it is reasonable to assume for purposes
19 of this removal that Plaintiffs and the putative class members each worked an
20 average of approximately 45 hours per week, five of which being overtime
21 hours.

22 29. Like the number of hours, the amount of revenue
23 Defendants pay to contractors for performing delivery services also varies
24 greatly from week to week and contractor to contractor. Savage Decl. ¶ 4.
25 Most contractors, however, are paid revenue ranging between approximately
26 \$900.00 and \$1,500.00 per week. Based on this information, it is reasonable to
27 assume for purposes of this removal that Plaintiffs and the putative class
28 members were each paid an average of \$1,200 per week.

1 30. Assuming Plaintiffs prevail on their overtime claim, based
2 on the above averages, the applicable "regular rate" of pay for Plaintiffs and the
3 putative class members under California law would be \$30 per hour (i.e.,
4 \$1,200/40). The applicable overtime rate is, therefore, \$45 per hour. Because
5 Plaintiffs allege that they and the putative class members were not paid straight
6 time or an overtime premium for overtime hours worked, Plaintiffs and each
7 putative class member would be entitled to \$45 for each overtime hour worked,
8 or \$225 per week (\$45 x 5 hours). Assuming each of the estimated 260 putative
9 class members performed services for 50 weeks per year for a period of four
10 years, the total amount of unpaid overtime sought would equal \$11,700,000.00
11 (\$225 x 50 weeks x 4 years x 260 putative class members). Plaintiffs' overtime
12 claims are subject to a four-year statute of limitations because three years are
13 available under the Labor Code with an additional fourth year available
14 pursuant to the Unfair Competition Law. See Cal. Code Civ. Proc. § 338(a) and
15 Cal. Bus. & Prof. Code § 17200.

16 31. Given the estimated amount of unpaid overtime sought by
17 Plaintiffs (which Defendant deems conservative based upon Plaintiffs'
18 allegations), it is unnecessary to consider any of the other four causes of action
19 alleged or the damages sought thereon to prove the existence of a sufficient
20 amount in controversy. Regardless, based simply on the number of estimated
21 class members and the nature of Plaintiffs' claims, it is clear Plaintiffs also seek
22 considerable damages with respect to each of the other causes of action. Thus,
23 there is no question that the \$5,000,000.00 threshold is exceeded.

24 **TIMELINESS OF REMOVAL**

25 32. This Notice of Removal is timely in that it has been filed within 30
26 days of the service of the Summons and Complaint on or about January 3, 2008,
27 and within one year of the filing of the Complaint on November 6, 2007. See
28 28 U.S.C. § 1446(b).

VENUE

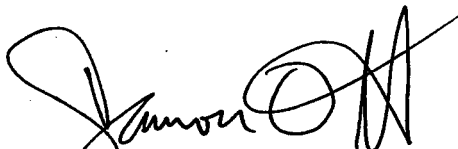
33. The action is pending in the Superior Court of California for the County of Alameda. Venue therefore properly lies in the United States District Court for the Northern District of California, Oakland Branch, pursuant to 28 U.S.C. §§ 1391(a) and 1441(a). However, Defendant reserves the right to move to transfer venue on information that Plaintiffs are not residents of the County of Alameda and/or for the convenience of the witnesses.

NOTICE TO PLAINTIFFS

34. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the Northern District of California, written notice of such filing will be given by the undersigned to Stephen Glick, Plaintiffs' counsel of record. In addition, a copy of this Notice of Removal will be filed with the Clerk of the Court for the Superior Court of the County of Alameda, California.

WHEREFORE, Defendant now prays that the above-entitled action now pending against Defendant in the Superior Court of the State of California, County of Alameda, should be removed therefrom to this Court.

Dated: February 1, 2008



DAMON M. OTT
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendants
VELOCITY EXPRESS LEASING,
INC. AND VELOCITY EXPRESS,
INC.

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FILED
FEB - 1 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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13 E-mail: bmittchell@littler.com

14 Attorneys for Defendants
15 VELOCITY EXPRESS LEASING, INC.; AND
16 VELOCITY EXPRESS, INC.

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

15 PHILIP JONES, and KIM KEO,
16 individually and on behalf of others
17 similarly situated, and on behalf of the
18 California general public,

19 Plaintiff,

20 v.

21 VELOCITY EXPRESS LEASING,
22 INC., also known as VELOCITY
23 EXPRESS LEASING WEST COAST,
24 INC., a Delaware Corporation;
25 VELOCITY EXPRESS, INC., a
26 Delaware Corporation; and DOES I
27 through 100, Inclusive,

28 Defendants.

Case No.

C08-00773 VRW

**DEFENDANTS' NOTICE TO
FEDERAL COURT OF REMOVAL
OF CIVIL ACTION FROM STATE
COURT UNDER 28 U.S.C. §§
1332(d), 1441(a), AND 1446**

Complaint Filed: November 6, 2007
(Alameda County Superior Court)

NOTICE OF REMOVAL OF CIVIL
ACTION

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT, PLAINTIFFS
2 PHILIP JONES AND KIM KEO AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that Defendants Velocity Express
4 Leasing, Inc. ("Velocity Express Leasing"), erroneously also sued as an entity
5 "also known as Velocity Express Leasing West Coast, Inc." and Velocity
6 Express, Inc. ("Velocity Express") (collectively "Defendants") hereby remove
7 the above-entitled action, Case No. RG 07354933, from the Superior Court of
8 the State of California, County of Alameda, to the United States District Court
9 for the Northern District of California, Oakland Branch.

10 Removal is based on 28 U.S.C. sections 1332(d) (the Class Action
11 Fairness Act), 1441(a) and 1446.

12 In support of this Notice of Removal, Defendant states the
13 following:

14 **PLEADINGS, SERVICE, PROCEEDINGS**

15 1. On November 6, 2007, Plaintiffs Philip Jones and Kim Keo
16 (collectively "Plaintiffs") filed a Class Action Complaint in the Superior Court
17 of the State of California, in and for the County of Alameda, which was
18 captioned as follows: *Philip Jones and Kim Keo, individually and on behalf of*
19 *all others similarly situated, and on behalf of the California general public,*
20 *Plaintiff, vs. Velocity Express Leasing, Inc. also known as Velocity Express*
21 *Leasing West Coast, Inc., a Delaware Corporation; Velocity Express, Inc., a*
22 *Delaware Corporation; and DOES 1 through 100, Inclusive, Defendants,*
23 designated as case number RG 07354933 ("Complaint"). See Declaration of
24 Damon M. Ott in Support of Notice of Removal ("Ott Decl.") ¶ 2, Exh. A
25 (Complaint).

26 2. On December 19, 2007, Judge Robert Freedman of the
27 Superior Court of the State of California, County of Alameda, issued an order
28

1 designating the case (Case No. RG 07354933) complex pursuant to Rule 3.400
2 *et seq.* of the California Rules of Court. See Ott Decl. ¶ 3, Exh. B (Order).

3 3. On January 3, 2008, Plaintiff served a copy of the Complaint
4 upon Defendants. See Ott Decl. ¶ 4, Exh. C (Notice of Service of Process).

5 4. On January 24, 2008, the Superior Court of the State of
6 California, Judge Robert Freedman presiding, conducted an initial Complex
7 Case Management Conference. Through its counsel, Defendants entered a
8 special appearance at the conference for the sole purpose of notifying the court
9 of Defendants' intention to remove the case to federal court. Plaintiffs appeared
10 generally at the conference, but did not file a Case Management Conference
11 Statement. See Ott Decl. ¶ 5.

12 5. On January 28, 2008, Plaintiffs' counsel, Stephen Glick,
13 served a Notice of Ruling dated January 25, 2008, which memorialized the
14 developments that occurred during the Complex Case Management Conference,
15 and noticed the next Complex Case Management Conference for February 28,
16 2008. See Ott Decl. ¶ 4, Exh. D (Notice of Ruling).

17 6. The above described documents, which are attached as
18 Exhibits A, B, C, and D to the Declaration of Damon M. Ott in Support of
19 Notice of Removal, constitute all of the papers that have been filed or received
20 in this action by Defendant. See Ott Decl. ¶ 7. Their submission thereby
21 satisfies the requirements of 28 U.S.C. Section 1446(a).

22 7. The January 24, 2008 Complex Case Management
23 Conference is the only proceeding to have been conducted in the Superior Court
24 of the State of California, County of Alameda, in the above-captioned matter.
25 See Ott Decl. ¶ 8.

26 JURISDICTION

27 8. This Court has original jurisdiction over this matter under
28 the Class Action Fairness Act because it is a civil action filed as a class action

1 wherein the aggregate amount in controversy exceeds \$5,000,000, exclusive of
2 interest and costs, and at least one plaintiff (if not all) is a citizen of a different
3 State than at least one (if not all) Defendants. 28 U.S.C. § 1332 (d). Although
4 the Class Action Fairness Act contains a number of exceptions to this newly
5 created rule of original jurisdiction (set forth in 28 U.S.C. Section 1332(d)(3)-
6 (5)), however, none of the apply here. Removal of this case to federal court is,
7 therefore, proper. 28 U.S.C. § 1441(a).

8 DIVERSITY

9 9. To satisfy the diversity component, the Class Action
10 Fairness Act requires that at least one member of a class of plaintiffs be a
11 citizen of a State different from any defendant. This requirement is satisfied
12 here.

13 10. Defendants are informed and believe that Plaintiff Philip
14 Jones is, and at all times relevant to this action was, a citizen of the State of
15 California. See Ott Decl. ¶ 9.

16 11. Defendants are informed and believe that Plaintiff Kim Keo
17 is, and at all times relevant to this action was, a citizen of the State of
18 California. See Ott Decl. ¶ 10.

19 12. Defendants are informed and believe that all or nearly all of
20 the members of the class whom Philip Jones and Kim Keo purport to represent
21 are, and at all times relevant to this action were, citizens of the State of
22 California. See Ott Decl. ¶ 8.

23 13. A corporation is deemed to be a citizen of both the state in
24 which it was incorporated and the state where it has its principal place of
25 business. 28 U.S.C. § 1332(c).

26 14. Both of the Defendants were incorporated in Delaware and
27 are, therefore, citizens of Delaware. See Declaration of Michael Trafecante
28 ("Trafecante Decl.") ¶¶ 3-4.

15. To determine a corporation's principal place of business, courts apply one of two tests. The first test, known as the "place of operations test," considers the principal place of business to be the state in which a substantial predominance of the company's business is performed. The second test, known as the "nerve center test," deems the principal place of business to be the state in which the corporation's executive and administrative functions are conducted. Tosco Corp. v. Communities for a Better Environment, 236 F.3d 495, 500 (9th Cir. 2001); Industrial Tectronics, Inc. v. Aero Alloy, 912 F.2d 1090, 1092 (9th Cir. 1990).

16. In the Ninth Circuit, courts use the "place of operations test" to establish a corporation's principal place of business unless a party demonstrates that its activities do not substantially predominate in any one particular state. Tosco, supra, 236 F.3d at 500 (holding the "Ninth Circuit applies the place of operations test unless the [party] shows that its activities do not substantially predominate in any one state."). To establish "substantial predominance," a party must show that the amount of its business activity in one state is significantly larger than any other state in which it conducts business. Id.

17. Although Defendants Velocity Express Leasing and Velocity Express are two separate legal entities, their business operations for the purposes of this suit are essentially one and the same. See Trafecante Decl. ¶ 5. Defendants are in the business of providing delivery services by and through a network of independent contractors. Id. Defendants share the same Chief Executive Officer, Chief Financial Officer, and Chief Administrative Officer, all of whom work out of Defendants' shared headquarters. Trafecante Decl. ¶ 8. Thus, it can be said that Defendants' business operations are wholly integrated.

1 18. Defendants' business activity is spread throughout 40 states,
2 with no one state predominating. Trafecante Decl. ¶¶ 6-7. The states in which
3 Defendants conduct the greatest volume of business are Florida and New York;
4 however, the business activity in these states is not significantly greater than
5 that conducted in other states. Trafecante Decl. ¶¶ 6-7. Regardless, if the place
6 of operations test were used, Defendants' principal place of business would
7 likely be New York, with Defendants being deemed citizens of the same.
8 Under no circumstances would either Defendant be deemed a citizen of
9 California using the place of operations test.

10 19. Because the business activity of Defendants in New York—
11 or any other state—is insufficient to trigger the place of operations test, the
12 nerve center test must instead be applied. The analysis under the nerve center
13 test would be the same for both Defendants because they are jointly operated by
14 the same executive and administrative personnel in the same locations. The
15 vast majority of Defendants' executive and administrative functions are
16 conducted at their headquarters in Westport, Connecticut. See Trafecante Decl.
17 ¶ 8. The Westport headquarters houses the Chief Executive Officer, the Chief
18 Financial Officer and the Chief Operations Officer, to name only a few. While
19 Defendants maintain smaller satellite offices in Texas and New Jersey, the
20 majority of all executive, managerial and administrative decisions are made in
21 the Westport, Connecticut office. See Trafecante Decl. ¶¶ 8-10. Defendants do
22 not maintain a corporate or administrative office in California, although they do
23 operate other types of operational facilities in the state. See Trafecante Decl. ¶¶
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25 20. In light of the above facts, Defendants' principal place of
26 business under the nerve center test, which is applicable here, is Connecticut.
27 Defendants are, therefore, citizens of Connecticut (and Delaware). By
28 comparison, Defendants' activities in Texas and New Jersey are too minimal for

1 either of those states to be deemed Defendants' principal place of business
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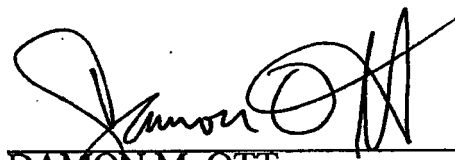
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